

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Revision of the Commission's Rules to Ensure) CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency)
Calling Systems)
)
Request for Waiver of Enhanced 911 Phase II)
Requirements by Cellular South Licenses, Inc.)

ORDER

Adopted: December 29, 2005

Released: December 29, 2005

By the Commission:

I. INTRODUCTION

1. In this *Order*, we address a request for relief from the Commission's wireless Enhanced 911 (E911) Phase II requirements filed by Cellular South Licenses, Inc. (Cellular South),¹ a Tier III wireless service provider.² Specifically, Cellular South seeks an extension of time to comply with the requirement in Section 20.18(g)(1)(v) of the Commission's Rules that carriers employing a handset-based E911 Phase II location technology must achieve 95% penetration, among their subscribers, of location-capable handsets by December 31, 2005.³

2. Timely compliance with the Commission's wireless E911 rules ensures that the important public safety needs of wireless callers requiring emergency assistance are met as quickly as possible. In analyzing requests for extensions of the Phase II deadlines, the Commission has afforded relief only when the requesting carrier has met the Commission's standard for waiver of the Commission's rules.⁴ Where carriers have met the standard, the relief granted has required compliance with the Commission's rules and policies within the shortest practicable time.⁵ We are also mindful of Congress' directive in the ENHANCE 911 Act to grant waivers for Tier III carriers of the 95%

¹ See Request for Limited Waiver and Extension of the Handset Penetration Deadline of the Commission's Phase II E911 Rules, CC Docket No. 94-102, filed Sept. 20, 2005 at 2 (Cellular South Request).

² Tier III carriers are non-nationwide Commercial Mobile Radio Service (CMRS) providers with no more than 500,000 subscribers as of the end of 2001. See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14848 ¶ 22 (2002) (*Non-Nationwide Carriers Order*).

³ See 47 C.F.R. § 20.18(g)(1)(v).

⁴ See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Phase II Compliance Deadlines for Tier III Carriers, CC Docket No. 94-102, *Order*, 20 FCC Rcd 7709, 7709-7710 ¶ 1 (2005) (*Tier III Carriers Order*).

⁵ See *id.*

penetration benchmark if “strict enforcement . . . would result in consumers having decreased access to emergency services.”⁶

3. Pursuant to the ENHANCE 911 Act, and based on the record before us, including the impact of Hurricane Katrina on Cellular South’s operations, we find that some relief from the 95% penetration requirement, until fifteen months following release of this *Order*, is warranted subject to certain conditions described below. These conditions are particularly important because Cellular South has failed to demonstrate a “clear path to full compliance” with the Commission’s 95% handset penetration requirement consistent with the Commission’s E911 waiver standards.⁷

II. BACKGROUND

A. Phase II Requirements

4. The Commission’s E911 Phase II rules require wireless licensees to provide Public Safety Answering Points (PSAPs) with Automatic Location Identification (ALI) information for 911 calls.⁸ Licensees can provide ALI information by deploying location information technology in their networks (a network-based solution),⁹ or Global Positioning System (GPS) or other location technology in subscribers’ handsets (a handset-based solution).¹⁰ The Commission’s rules also establish phased-in schedules for carriers to deploy any necessary network components and begin providing Phase II service.¹¹ However, before a wireless licensee’s obligation to provide E911 service is triggered, a PSAP must make a valid request for E911 service, *i.e.*, the PSAP must be capable of receiving and utilizing the data elements associated with the service and must have a mechanism in place for recovering its costs.¹²

5. In addition to deploying the network facilities necessary to deliver location information, wireless licensees that elect to employ a handset-based solution must meet the handset deployment benchmarks set forth in Section 20.18(g)(1) of the Commission’s Rules, independent of any PSAP request for Phase II service.¹³ After ensuring that 100% of all new digital handsets activated are location-

⁶ National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004). *See also infra* ¶ 8.

⁷ Because we find that some relief from the 95% handset penetration requirement is warranted pursuant to the ENHANCE 911 Act, we need not determine whether Cellular South met the Commission’s waiver standard. Although demonstration of a “clear path to full compliance” is not required to warrant some relief under the ENHANCE 911 Act, this element of our waiver standard provides useful guidance in determining the extent to which such relief should be granted.

⁸ *See* 47 C.F.R. § 20.18(e).

⁹ Network-based location solutions employ equipment and/or software added to wireless carrier networks to calculate and report the location of handsets dialing 911. These solutions do not require changes or special hardware or software in wireless handsets. *See* 47 C.F.R. § 20.3, *Network-based Location Technology*.

¹⁰ Handset-based location solutions employ special location-determining hardware and/or software in wireless handsets, often in addition to network upgrades, to identify and report the location of handsets calling 911. *See* 47 C.F.R. § 20.3, *Location-Capable Handsets*.

¹¹ *See* 47 C.F.R. §§ 20.18(f), (g)(2).

¹² *See* 47 C.F.R. § 20.18(j)(1).

¹³ *See* 47 C.F.R. § 20.18(g)(1).

capable, licensees must achieve 95% penetration among their subscribers of location-capable handsets no later than December 31, 2005.¹⁴

B. Waiver Standards

6. The Commission has recognized that smaller carriers may face “extraordinary circumstances” in meeting one or more of the deadlines for Phase II deployment.¹⁵ The Commission previously has stated its expectations for requests for waiver of the E911 Phase II requirements. Waiver requests must be “specific, focused and limited in scope, and with a clear path to full compliance. Further, carriers should undertake concrete steps necessary to come as close as possible to full compliance . . . and should document their efforts aimed at compliance in support of any waiver requests.”¹⁶ To the extent that a carrier bases its request for relief on delays that were beyond its control, it must submit specific evidence substantiating the claim, such as documentation of the carrier’s good faith efforts to meet with outside sources whose equipment or services were necessary to meet the Commission’s benchmarks.¹⁷ When carriers rely on a claim of financial hardship as grounds for a waiver, they must provide sufficient and specific factual information.¹⁸ A carrier’s justification for a waiver on extraordinary financial hardship grounds may be strengthened by documentation demonstrating that it has used its best efforts to obtain financing for the required upgrades from available Federal, state, or local funding sources.¹⁹ The Commission also noted, in considering earlier requests for relief by Tier III carriers, that it

expects all carriers seeking relief to work with the state and local E911 coordinators and with all affected PSAPs in their service area, so that community expectations are consistent with a carrier’s projected compliance deadlines. To the extent that a carrier can provide supporting evidence from the PSAPs or state or local E911 coordinators with whom the carrier is assiduously working to provide E911 services, this would provide evidence of its good faith in requesting relief.²⁰

¹⁴ See 47 C.F.R. § 20.18(g)(1)(v).

¹⁵ See *Tier III Carriers Order*, 20 FCC Rcd at 7714 ¶ 9; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14846 ¶ 20 (“wireless carriers with relatively small customer bases are at a disadvantage as compared with the large nationwide carriers in acquiring location technologies, network components, and handsets needed to comply with our regulations”); *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers*, CC Docket No. 94-102, *Order to Stay*, 18 FCC Rcd 20987, 20994 ¶ 17 (2003) (*Order to Stay*) (“under certain conditions, small carriers may face extraordinary circumstances in meeting one or more of the deadlines for Phase II deployment and [] relief may therefore be warranted”).

¹⁶ *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442, 17458 ¶ 44 (2000) (*Fourth MO&O*).

¹⁷ See *Order to Stay*, 18 FCC Rcd at 20996-97 ¶ 25.

¹⁸ See *id.* at 20997 ¶ 29. We note that the Commission generally is disinclined to find that financial hardship alone is a sufficient reason for an extension of the E911 implementation deadlines. *Id.*

¹⁹ See *id.*

²⁰ *Order to Stay*, 18 FCC Rcd at 20997 ¶ 28.

7. In applying the above criteria, the Commission has in the past recognized that special circumstances particular to smaller carriers may warrant limited relief from E911 requirements. For example, the Commission has noted that some Tier III carriers face unique hurdles such as significant financial constraints, small and/or widely dispersed customer bases, and large service areas that are isolated, rural or characterized by difficult terrain (such as dense forest or mountains), along with a corresponding reduced customer willingness to forgo existing handsets that may provide expanded range, but are not location-capable.²¹ In evaluating requests for waiver from Tier III carriers, the Commission, therefore, has considered challenges unique to smaller carriers facing these circumstances.

8. Finally, distinct from the Commission's rules and established precedent regarding waivers of the E911 requirements, in December 2004 Congress enacted the Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004 (ENHANCE 911 Act).²² The ENHANCE 911 Act, *inter alia*, directs the Commission to act on any petition filed by a qualified Tier III carrier requesting a waiver of Section 20.18(g)(1)(v) within 100 days of receipt, and grant such request for waiver if "strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services."²³

C. Request for Waiver

9. Cellular South is a Tier III carrier providing Cellular Radiotelephone Service and Personal Communications Service (PCS) "mainly in Mississippi, Tennessee, Alabama, and the Florida panhandle, as well as in Arkansas and Louisiana."²⁴ It utilizes a handset-based E911 Phase II solution in its Code Division Multiple Access (CDMA) network, which it deployed throughout its service area in early 2004.²⁵ Prior to filing the instant request for waiver, Cellular South submitted a request for waiver on December 17, 2002, and was granted relief in the *Tier III Carriers Order*.²⁶ Specifically, the Commission granted extensions of Cellular South's location-capable handset sale and activation deadlines, but did not alter the December 31, 2005 deadline for Cellular South to achieve 95% penetration of location-capable handsets among its subscribers.²⁷ In the instant request, Cellular South seeks an eighteen-month extension of the December 31, 2005 deadline to June 30, 2007.²⁸

10. Cellular South affirms that it has met or exceeded all of the handset sale and activation deadlines imposed pursuant to the *Tier III Carriers Order*.²⁹ It states that it has established a history of

²¹ See *Tier III Carriers Order*, 20 FCC Rcd at 7718, 7719, 7726, 7732, 7736-7737 ¶¶ 17, 19, 37, 57, 70.

²² National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

²³ *Id.* at § 107(a), 118 Stat. 3986, 3991. The ENHANCE 911 Act defines a "qualified Tier III carrier" as "a provider of commercial mobile service (as defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d))) that had 500,000 or fewer subscribers as of December 31, 2001." *Id.* at § 107(b), 118 Stat. 3986, 3991.

²⁴ Cellular South Request at 2.

²⁵ *Id.*

²⁶ See *Tier III Carriers Order*, 20 FCC Rcd at 7726-7728 ¶¶ 39-42.

²⁷ *Id.* at 7728 ¶ 42.

²⁸ Cellular South Request at 6, 10.

²⁹ *Id.* at 4.

compliance with PSAP requests and has maintained an ongoing dialog both with PSAPs and state E911 coordinators.³⁰ Cellular South also asserts that it “has engaged in targeted activities to encourage subscribers to convert from TDMA and analog handsets” to CDMA-based location-capable handsets.³¹ It states, for example, that since November 2004, it has engaged in a direct calling campaign to customers with non-location-capable handsets, offering free phones under the terms of their existing plans and contracts.³² Cellular South notes other campaigns, including text messages sent to subscribers, advertisements, and promotions.³³ It also states that, as a further enticement, it has “mirrored six TDMA plans” to entice customers with TDMA phones to upgrade to CDMA phones.³⁴

11. Cellular South asserts that, despite its efforts, it is “unlikely” to be able to meet the December 31, 2005 deadline.³⁵ It indicates that “many subscribers adamantly insist upon keeping their TDMA and analog phones because the phones are more dependable, operate in a larger range, and are already programmed with favorite phone numbers and customized features.”³⁶ It states that as of July 2005, it achieved 82% penetration, and that it previously had anticipated needing an additional twelve months to achieve 95% penetration.³⁷ Cellular South asserts, however, that the effects of Hurricane Katrina on its operations now require that it seek an eighteen-month extension to achieve 95% penetration.³⁸

12. Cellular South states that the “effects of Hurricane Katrina have been harmful to network operations” and that it “has been fully occupied with deployment of temporary transmitter sites and restoration of permanent network and retail facilities.”³⁹ Although observing that deployment of new handsets to affected subscribers will be “a large part” of its rebuilding efforts, it adds that “the focus of Cellular South’s efforts will be to construct new network facilities, rehabilitate customer service centers and billing records, and restore subscriber service.”⁴⁰ Cellular South asserts that its “[m]arketing efforts aimed at handset replacement . . . have become less effective due to the need for essential wireless services.”⁴¹ It states that “when the market for new phones becomes viable again, Cellular South will restart the marketing campaigns to encourage consumer adoption of new handsets.”⁴² Cellular South argues that strict enforcement of the December 31, 2005 95% handset penetration deadline in this case would reduce consumer access to emergency services because it would require Cellular South to either

³⁰ *Id.* at 3-4, 6.

³¹ *Id.* at 5.

³² *Id.*

³³ *Id.* at 5, Attachment 3 (including samples of marketing of location-capable handsets).

³⁴ *Id.* at 5.

³⁵ *Id.* at 1.

³⁶ *Id.* at 9.

³⁷ *Id.* at 8-9, 3 n.2.

³⁸ *Id.* at 2.

³⁹ *Id.* at 2.

⁴⁰ *Id.* at 3.

⁴¹ *Id.* at 2.

⁴² *Id.* at 9.

deactivate its TDMA and analog systems, or convert to a network-based solution.⁴³ For these reasons, Cellular South submits that the requested waiver should be granted under the Commission's waiver standards, as well as under the ENHANCE 911 Act.⁴⁴

III. DISCUSSION

13. We believe that it is critical for all handset-based carriers to meet the final implementation deadline of December 31, 2005 for 95% location-capable handset penetration, if at all possible, in order to allow all stakeholders (including carriers, technology vendors, public safety entities, and consumers) to have greater certainty about when Phase II will be implemented and ensure that Phase II is fully implemented as quickly as possible.⁴⁵ Absent Phase II location data, emergency call takers and responders must expend critical time and resources questioning wireless 911 callers to determine their location, and/or searching for those callers when the callers cannot provide this information. At the same time, however, the Commission has recognized that requests for waiver of E911 requirements may be justified, but only if appropriately limited, properly supported, and consistent with established waiver standards.⁴⁶ Accordingly, when addressing requests for waiver of the 95% handset penetration deadline, we remain mindful that delay in achieving the required handset penetration level could impair the delivery of safety-of-life services to the public. We must also remain mindful, however, of Congress' directive in the ENHANCE 911 Act to grant Tier III waivers if strict enforcement would result in consumers having decreased access to emergency services.⁴⁷

14. For the reasons discussed below, we find that Cellular South is entitled to some relief pursuant to the provisions of the ENHANCE 911 Act, but are concerned that Cellular South has not shown a clear path to full compliance with the 95% handset penetration requirement that would justify grant of the full the eighteen-month extension requested. Accordingly, we are limiting the relief afforded Cellular South, subject to certain conditions and reporting requirements so that the Commission can effectively monitor Cellular South's progress in meeting the 95% handset penetration benchmark.

15. As noted above, pursuant to the ENHANCE 911 Act, we must grant a request for waiver of the 95% handset penetration requirement filed by a qualified Tier III carrier if strict enforcement of that requirement would result in consumers having decreased access to emergency services. We find that Cellular South is entitled to some relief under the ENHANCE 911 Act because Cellular South argues that strict compliance with the handset penetration requirement would force it to terminate service to a number of its TDMA and analog subscribers in order to achieve the requisite location-capable handset penetration level of 95%⁴⁸ and because of the impact of Hurricane Katrina on Cellular South's operations.

⁴³ See *id.* at 6-7.

⁴⁴ See *id.* at 6-8.

⁴⁵ See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14853 ¶ 38.

⁴⁶ See *Tier III Carriers Order*, 20 FCC Rcd at 7709-7710 ¶ 1; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-14843 ¶ 6.

⁴⁷ See *supra* ¶ 8.

⁴⁸ Such an outcome would leave certain customers who use TDMA and analog handsets without any wireless communications services, including access to emergency services, at least until such customers obtain location- (continued....)

16. With regard to the impact of Hurricane Katrina, Cellular South claims that parts of its network in southern Mississippi were damaged by Hurricane Katrina, requiring "technical crews" to "work diligently to fully restore wireless communications in areas most affected"⁴⁹ and that some of its post-storm activities were directed to the rehabilitation of retail outlets.⁵⁰ Cellular South represents that "the focus of [its future] efforts will be to construct new network facilities, rehabilitate customer service centers and billing records, and restore subscriber service" and that its marketing campaigns aimed at increasing location-capable handset penetration levels "will be altered to be sensitive to the special needs of residents . . . affected by Hurricane Katrina."⁵¹

17. The Commission previously has noted that in the Gulf area, including Alabama, Louisiana, and Mississippi, "[l]ocal wireless networks [] sustained considerable damage," including the loss of more than a thousand cell sites.⁵² Although it is unclear to what extent Hurricane Katrina may have affected Cellular South's ability to meet our handset penetration requirement, we acknowledge Cellular South's representations concerning the state of its network and believe that, at least in the near term, requiring Cellular South to strictly comply with that requirement could detract from its service restoration efforts and result in affected subscribers having "decreased access to emergency services," in contravention of the ENHANCE 911 Act.

18. As a result of the foregoing circumstances, we find that the ENHANCE 911 Act requires us to grant some relief from the location-capable handset penetration requirement to Cellular South.⁵³ We fully expect Cellular South to engage in all necessary efforts to ensure that it meets the 95% handset penetration benchmark as quickly as possible. In particular, we expect that Cellular South will take all necessary efforts to avoid any future need to claim that it must resort to service deactivations among

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capable handsets and/or receive wireless service from other carriers that can provide them with E911 Phase II service.

⁴⁹ Cellular South Request at 2.

⁵⁰ *Id.*

⁵¹ *Id.* at 3, 5.

⁵² See Federal-State Joint Board on Universal Service, CC Docket 96-45, *Order*, FCC 05-178, ¶ 2 (rel. Oct. 14, 2005) (*Universal Service Hurricane Impact Order*). See also Statement of Chairman Kevin J. Martin, Sept. 14, 2005 Open Meeting ("The destruction to the facilities of the communications companies in the region was extraordinary."); Joint Statement of Chairman Kevin J. Martin, Commissioner Kathleen Q. Abernathy, Commissioner Michael J. Copps, and Commissioner Jonathan S. Adelstein on Hurricane Katrina Restoration Efforts (rel. Sept. 6, 2005), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-260871A1.doc ("Hurricane Katrina severely shook the communications network in the Gulf Coast and restoring all these links will be as challenging a communication mission as we have ever confronted. Dedicated employees from wireline, wireless, broadcast, cable, and satellite companies are working around the clock to restore communications services to millions of customers.").

⁵³ Because we make this finding, we do not address Cellular South's argument that, absent relief, it would need to implement a network-based Phase II solution. We separately note that Cellular South mentions that some TDMA and analog phones "operate in a larger range." See Cellular South Request at 9. While we have recognized in previous orders that non-location-capable phones offering increased range may provide a basis for relief under the ENHANCE 911 Act, because such customers could have reduced access to emergency services if forced to convert to location-capable phones, there is insufficient evidence in the record to reach the same conclusion in this case. Cf. Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Petitions for Waiver of Enhanced 911 Phase II Requirements, CC Docket No. 94-102, *Order*, FCC 05-182 (rel. Oct. 28, 2005) at ¶ 20.

consumers using TDMA and analog handsets to achieve compliance with the 95% handset penetration benchmark. Absent Cellular South's undertaking all such necessary efforts on an ongoing basis, Cellular South should not assume that the Commission would act favorably on any future request for relief based on these same grounds.

19. We are limiting and conditioning the relief we are providing because Cellular South has not sufficiently demonstrated a clear path to full compliance with the 95% location-capable handset penetration requirement. As explained above, to the extent that a carrier bases a claim for relief on delays that were beyond its control, it must provide "specific evidence substantiating the claim."⁵⁴ Cellular South has not done so, and we cannot perceive a clear path to full compliance from the information it has supplied.⁵⁵ Although Cellular South has offered generalities concerning the impact of Hurricane Katrina on its operations, it has not disclosed what specific areas were affected and the extent of damage to its facilities, or presented an anticipated timetable for restoration of services and resumption of the marketing efforts necessary to achieve higher location-capable handset penetration levels. It also has failed to explain why it apparently cannot proceed with efforts to increase penetration levels in those areas of its service territory unaffected by Hurricane Katrina.⁵⁶ Indeed, in its discussion of the overall effect of Hurricane Katrina, Cellular South is particularly vague in saying that future progress on achieving a 95% penetration rate "remain[s] to be seen."⁵⁷

20. In sum, taking into account the totality of the circumstances affecting Cellular South, including its status as a Tier III carrier, the effects of Hurricane Katrina, and the presence of analog and TDMA subscribers on its network, and consistent with the ENHANCE 911 Act, we are granting Cellular South a limited extension of fifteen months from the release of this *Order* to achieve a 95% handset penetration level among its subscribers and are imposing certain conditions and reporting obligations so that we may monitor Cellular South's compliance efforts.⁵⁸ If Cellular South were to require further relief, it must document the particularized nature and extent of the impact of Hurricane Katrina on its ability to achieve a 95% penetration rate and specify, in detail, the nature and timing of the efforts it has made to achieve compliance.

21. *Conditions.* As a condition of the relief granted herein, Cellular South has an ongoing obligation, until it achieves a 95% handset penetration rate among its subscribers of location-capable handsets, to (1) notify its customers, such as by billing inserts, when it reasonably expects PSAPs will make valid requests for Phase II service, to the effect that by upgrading their handsets they will have the

⁵⁴ See *supra* ¶ 6 (citing *Order to Stay*, 18 FCC Rcd at 20996-97 ¶ 25).

⁵⁵ The Commission's waiver standards also recognize the prospect of financial hardship in a request for relief, but Cellular South similarly has not made or substantiated any such claim. See *id.*

⁵⁶ Cellular South focuses on Hurricane Katrina's impact in Mississippi specifically. See Cellular South Request at 2 ("Restoration of power and utilities the State of Mississippi has been ongoing."), 3 ("Cellular South proposes to rebuild its network in south Mississippi as priority one."). It does not discuss whether and to what extent its operations in the other states within its service areas that may have been affected by Hurricane Katrina, Louisiana and Alabama, were impacted. Further, we note that Cellular South provides service in several other states unaffected by Hurricane Katrina, namely Florida, Arkansas and Tennessee.

⁵⁷ Cellular South Request at 8.

⁵⁸ We note that the Commission has not received any objections from the public safety community with respect to the instant request.

ability to automatically transmit their location information, and (2) actively work with the PSAPs to keep them informed of its progress in achieving higher location-capable handset penetration rates.

22. *Reporting Requirements.* Finally, in order to monitor compliance in accordance with the relief of the December 31, 2005 95% handset penetration requirement granted herein, we will require Cellular South to file status reports every February 1, May 1, August 1, and November 1, until two years following release of this *Order*,⁵⁹ which shall include the following information: (1) the number and status of Phase II requests from PSAPs (including those requests it may consider invalid); (2) the estimated dates on which Phase II service will be available to PSAPs served by its network; (3) the status of its coordination efforts with PSAPs for alternative 95% handset penetration dates; (4) its efforts to encourage customers to upgrade to location-capable handsets; (5) the percentage of its customers with location-capable phones; and (6) until it satisfies the 95% penetration rate, detailed information on its status in achieving compliance and whether it is on schedule to meet the revised deadline. We emphasize that irrespective of the relief we grant in this *Order*, we fully expect Cellular South to achieve compliance as quickly as possible.

IV. CONCLUSION


23. For the foregoing reasons and pursuant to the ENHANCE 911 Act, we conclude that Cellular South is entitled to a limited extension of the December 31, 2005 requirement that it achieve 95% penetration among its subscribers of location-capable handsets. Specifically, we extend the date that Cellular South must achieve 95% penetration until fifteen months following release of this *Order*, and impose conditions and reporting requirements to ensure that Cellular South achieves full compliance with the Commission's E911 requirements. We reiterate that any party seeking a waiver from our E911 rules must demonstrate a clear path to full compliance.

V. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED, pursuant to the ENHANCE 911 Act, Pub. L. No. 108-494, 118 Stat. 3986 (2004), and Sections 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the foregoing *Order* IS ADOPTED.

25. IT IS FURTHER ORDERED, that the Request for Limited Waiver and Extension of the Handset Penetration Deadline of the Commission's Phase II E911 Rules by Cellular South Licenses, Inc., IS GRANTED IN PART to the extent described above, and subject to the conditions and reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) will be fifteen months following release of this *Order*.

FEDERAL COMMUNICATIONS COMMISSION


Marlene H. Dortch
Secretary

⁵⁹ We note that we are requiring Cellular South to file status reports beyond the fifteen months from release of this *Order* by which we otherwise require Cellular South to achieve 95% penetration among its subscribers of location-capable handsets. We believe it is important to continue monitoring Cellular South's progress for an additional nine months beyond this compliance deadline.